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8 **BEFORE THE REVIEWING OFFICER**  
9 **SECRETARY OF STATE OF THE STATE OF WASHINGTON**

10 ROBERT EDELMAN,

11 Complainant,

12 v.

13 SECRETARY OF STATE,

14 Respondent.

NO. 2008-SOS-0001

RESPONSE OF RESPONDENT  
TO COMPLAINANT'S APPEAL  
FROM INITIAL DECISION

15 Respondent Secretary of State, Elections Division, submits this response to the appeal  
16 by Complainant Robert Edelman from the Initial Decision entered by Administrative Law  
17 Judge (ALJ) Rebekah R. Ross. Respondent refers the Reviewing Officer to its arguments  
18 previously made in its written and oral submissions with respect to any issues not addressed in  
19 this response.  
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21 During the proceedings before the ALJ the parties had a full opportunity to submit  
22 whatever information and arguments they wanted. The assigned ALJ, who has no connection  
23 to the Secretary of State, considered the presentations of the parties. The ALJ did not ignore  
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1 or disregard any information submitted by Mr. Edelman.<sup>1</sup> Rather, she simply disagreed with  
2 his legal position and concluded that he had not met his burden of proving that the State or  
3 county election officials had violated HAVA.

4 Mr. Edelman argues that the ALJ misinterpreted the Secretary's duties under HAVA  
5 and that the Secretary has a duty to prevent underage applicants from being placed on the  
6 voter database. Appeal at p. 1, third paragraph. However, HAVA does not use the term  
7 "prevent," and the section of HAVA that Mr. Edelman relies on for this—that the voter  
8 database is to be accurate—must be read in its entirety. That section goes on to state that the  
9 State official's duty is to "make[ ] a reasonable effort to remove registrants who are ineligible  
10 to vote . . . ." 42 U.S.C. § 15483(a)(4)(A)(emphasis added). Thus, HAVA itself recognizes  
11 that registrants who are ineligible may inadvertently get onto the voter database. The ALJ did  
12 not err in concluding that the State was making a reasonable effort to remove ineligible voters  
13 and that Mr. Edelman had not met his burden in showing a violation of this provision.

14 Mr. Edelman's proposed remedy of having State and county elections officials reject  
15 or return voter registration forms from underage applicants, rather than pend them, would  
16 result in needless confusion to applicants and would likely discourage some potentially  
17 eligible voters from registering in time to vote. Both HAVA and state law (and Mr. Edelman  
18 himself) recognize that individuals can legally register to vote prior to their 18th birthday.  
19 Not all 17-year old applicants will know when the next election is. Under Mr. Edelman's  
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23 <sup>1</sup> To the extent that Mr. Edelman's appeal can be characterized as taking exception to any of the ALJ's  
24 findings of fact, such exceptions are misplaced. For example, Mr. Edelman states that the ALJ erroneously  
25 concluded that the practice of pending underage registration forms has prevented any underage voters from  
26 actually being placed on the statewide voter database. Appeal at p. 2, top paragraph. The ALJ did not say this.  
The ALJ recognized that some underage voters have been erroneously placed on the database and that a few had  
actually cast ballots. See Initial Decision at ¶ 3.9. What the ALJ actually said was that the practice of pending  
such voter application forms is not intended to result in underage applicants showing up as eligible voters. See  
Initial Decision at ¶ 4.3.

1 approach, a county would have to reject or return a voter registration form, even though the  
2 applicant might become eligible just a few days later. Mr. Edelman's approach is overly  
3 bureaucratic and is at odds with the overall goal of encouraging citizens to register to vote.  
4 The ALJ correctly concluded that nothing in HAVA precluded the present practice of pending  
5 such application forms until the applicant reaches the required age.  
6


7 In his appeal, Mr. Edelman argues that the steps necessary to prevent the registration  
8 of underage voters "are simple to carry out." Appeal at p. 1, third paragraph. However,  
9 Mr. Edelman's requested remedies, such as rejecting or returning application forms, present  
10 their own problems as just discussed. In addition, changes to the way the voter database is  
11 configured or adding direct controls at the state level could be expensive and inconsistent with  
12 the premise under both HAVA and state law that the initial responsibility for voter registration  
13 lies with the counties.  
14

15 HAVA expressly provides: "The specific choices on the methods of complying with  
16 the requirements of this title shall be left to the discretion of the State." 42 U.S.C. § 15485.  
17 The statewide voter database has only been in place since January 2006. The Elections  
18 Division staff continues to work with the counties to improve the operation of the database.  
19 Mr. Edelman and other interested individuals and groups are certainly encouraged to make  
20 suggestions for improving the system and to point out specific irregularities in the information  
21 in the database. Ultimately, however, in the absence of a HAVA violation, the determination  
22 of how to best comply with HAVA is entrusted to the State.  
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1 The ALJ correctly concluded that Mr. Edelman had not met his burden of proving a  
2 HAVA violation, and the Secretary should affirm the ALJ's decision dismissing his  
3 complaint.

4 DATED this 11th day of September, 2008.

5 ROBERT M. MCKENNA  
6 Attorney General

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8 SPENCER W. DANIELS  
9 Assistant Attorney General  
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DATED this 11th day of September, 2008, at Olympia, WA.

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